

## **MOTION TO CHANGE CHILD SUPPORT, SPOUSAL MAINTENANCE, LEGAL CUSTODY OR PHYSICAL PLACEMENT**

This form may be used to request that the court increase or decrease a court ordered support payment such as child support or spousal maintenance, determine use of the dependency exemption for income taxes, or address the payment of uninsured medical expenses of the children. It may also be used to request changes to legal custody or physical placement. Filing the motion does not guarantee that you will succeed in your request for a modification; it only provides you the opportunity to present your case to the Court.

**NOTE: Do not use this form if there is an agreement to change** custody, placement, support or other financial provisions. Instead, complete and sign the “Stipulation & Order to Amend Judgment for Support/Maintenance/Custody/Placement” (forms FA-604A and FA-604B), available in the Dane County Law Library (Rm L1007) or online at <https://courts.countyofdane.com/Resources/Forms/family-forms>. If the parties stipulate to the change(s), there is no fee involved.

### **STEP 1...Fill out the motion**

You should read all instructions before filling out the forms. Type or print neatly using **black ink only**. Use the instructions in the left margin of the actual motion to help you complete it accurately.

#### **This packet includes the following forms:**

1. Notice of Motion and Motion to Change...(FA-4170V)
2. Two (2) copies of the Income and Expense Statement (FA-4138V)
3. Affidavit of Mailing (FA-4121V)

Two (2) Income & Expense Statements are included with this packet: one blank form to be served on the other party and one to be filled out by you to bring to the hearing. If you will be serving the other party using the Sheriff's Department or a private process server, you will need another blank copy for personal service, i.e., a total of 3 blank Income & Expense Statements.

Also, **you need to attach a copy of the most recent court order**, or portion of the order that pertains to the issue you want changed, to your original motion and all copies. Go to Court Records (Rm 1002) if you need to have a copy of your court order printed. There is a printing fee of \$1.25 per page.

**\*\*Note:** If you have found these instructions online, you will need to download and print each form individually. There are links from the Dane County Clerk of Courts Family Court Forms page, web address listed above.

### **STEP 2...Make photocopies of all your documents**

Make 3 copies of the motion, your most recent court order, and all attachments. There is a public photocopier in the Dane County Law Library (Rm L1007) for \$.25 per copy.

### **STEP 3...Pay the filing fee at the Clerk of Courts Office (Rm 1000) Dane County Courthouse, 215 S. Hamilton Street, Madison, WI 53703.**

The filing fee is **\$30.00 for motions to change child support or spousal maintenance**

The filing fee is **\$50.00 for motions to change child support and/or spousal maintenance AND legal custody and/or physical placement.**

If you believe you are entitled to a waiver of this fee because of poverty, complete a Petition for Waiver of Filing and Service Fees, available in the CCC (Rm 2000) or the Dane County Law Library (Rm L1007). Court personnel in Room 2000 will determine if the fee can be waived, or direct you to the assigned judge if necessary. **If you plan to ask for a waiver, do so after you make all of your photocopies but before you pay the filing fee.**

If you are not eligible for a fee waiver, a Clerk in the Clerk of Courts (Rm 1000) will take your payment and stamp the original to indicate the fee has been paid.

**FOR EVERYONE:** After your fees have been waived or you have paid the filing fee, take your original and 3 sets of copies to the Clerks at the CCC (Rm 2000). If you are filing a motion to change a financial order, (i.e. child support, spousal maintenance, arrears balances), you may receive a hearing date from the Clerk who is taking

your original documents. They will write the date, place of hearing, and the name of the assigned commissioner on all the copies.

If you are filing a motion to change custody/placement **OR** custody/placement **AND** a financial order, the Clerk will stamp "TO BE SET" in the section for the hearing date and time on the original and all copies. A Commissioner will review the document to determine if there are sufficient facts to justify scheduling a hearing. You will either receive the date by mail or will be advised by mail why your case will not be scheduled.

**\*IF YOU DO NOT RECEIVE A DATE FOR THE MOTION WHEN YOU ARE IN THE COURTHOUSE, YOU MUST STILL FOLLOW THE PROCEDURES IN STEP 4 FOR SERVING THE OTHER PARTY WITH A COPY OF WHAT YOU FILED. DO NOT WAIT TO RECEIVE THE DATE.**

\*If you are seeking to modify an order from another county or state, you will need to complete and file additional forms and pay other fees. Ask at the Dane County Law Library (Rm L1007) for more information.

**\*If you are filing by mail**, you must include the original motion, three (3) copies of the motion and most recent court order and anything else you are attaching to it, a check or money order for the appropriate amount of filing fee made payable to the Dane County Clerk of Courts, and a self-addressed stamped envelope so the clerk can return the original and a copy to you for service. Your documents will not be mailed back to you unless you provide an envelope with sufficient postage.

#### **STEP 4...Serve the Notice of Motion and Motion to Change and Income and Expense Statements**

All filed motions must be served on the other party and have a blank Income and Expense Statement attached to the other party's copy. If the other party had an attorney at the last hearing, mail a copy of the forms to the attorney too.

##### **A. Mail**

You may use regular mail to serve the Notice of Motion and Motion to Change forms on the other party. If you use regular mail, you must make a diligent effort to find out the address of the other party and must provide the other party with the notice at their most recent residential address or employer address provided by the other party to the county child support agency. **If you serve by mail, you must complete and submit a copy of an Affidavit of Mailing for proof of service.** One (1) Affidavit of Mailing form has been included in this form packet. Additional copies can be obtained for a small fee from the Dane County Law Library (Rm L1007) or online.

##### **B. Sheriff**

If the other party lives in Dane County, you may have the Notice of Motion and Motion to Change served on the other party by the Civil Process Division of the Dane County Sheriff's Office, Public Safety Building (Rm 2002), 115 W. Doty Street, (608) 284-6824. **The Sheriff will need two (2) copies of everything you filed.** There is a \$40 charge for every attempted service plus round-trip mileage that the deputy travels. Once the Sheriff has served the forms, **you will be sent proof of service; bring the original and a copy with you to the hearing, or submit it beforehand.**

\*If the person to be served lives outside of Dane County, call the Sheriff in the county where the person lives for instructions on serving the papers.

##### **C. Private Process Server**

You may use a private process server to serve the Notice of Motion and Motion to Change on the other party. To locate a private process server, you may do an internet query of local process servers. Once the forms have been served, you will be sent a Proof of Service. **Bring the original and a copy of the Proof of Service to the hearing, or submit it beforehand.**

#### **STEP 5...Attend the hearing or prepare for mediation**

##### **For child support or spousal maintenance motions:**

You must be prepared to present your case to a Court Commissioner if you do not have an attorney. The Court Commissioner cannot represent you. The Commissioner is an impartial decision maker. Bring a completed copy of the Income and Expense Statement, the other items you are ordered to bring from the "Notice of Motion and Motion to Change," and any other documentation of your income or other verification of financial information you believe is relevant to your case. You should have an original and two copies of any document you wish the Commissioner to look at in support of your case.

The Court Commissioner can change the order only if there has been a substantial change in circumstances. The Wisconsin Child Support Guidelines are usually used in revising child support orders unless one of the parties shows that use of the guidelines would be unfair to one of the parties or to the children. The Court will usually consider the economic circumstances of both the parties including the incomes of other household members such as current spouses or partners.

**For legal custody/physical placement motions:**

A Commissioner will review the forms to make sure that your motion is appropriate under the law. When the motion is reviewed, the commissioner may enter a “Preliminary Order on Review of Post Judgment Custody/Physical Placement Motion” and may do any of the following:

- a. Schedule the matter for a 1-2 hour hearing to consider the motion;
- b. Schedule the matter for a 20-40 minute status hearing
- c. Refer you to Family Court Services (FCS) for mediation, or
- d. Forward the papers to the assigned judge for further scheduling.

If the motion is:

- a. Scheduled for a hearing to consider the motion; parties will receive notice of the court date in the mail and must attend the hearing.
- b. Referred to FCS, the parties will be notified by FCS of a session date for Parent Education.
- c. Forwarded to the assigned judge for further scheduling, parties will receive mailed notice from the Judge’s office of a court date.

If you are referred to the FCS, both parties will have to attend a session of Parent Education. Then, FCS will schedule a mediation session for both parties. Mediation may be waived by the Judge or Commissioner if there are concerns about domestic violence or other significant factors. There is a fee for the parent education session, but not for the first mediation session. There is a fee if additional mediation sessions are needed.

If the parties reach an agreement or a partial agreement in mediation, the counselor will circulate the agreement to the parties, their attorneys, and the GAL, if any, for review. If no objections or modifications are received within 30 days, the counselor will certify the written agreement accurately reflects the agreement of the parties and will forward the agreement to the assigned judge. The court may enter an order incorporating the terms of the agreement as a final order of the matters set forth in the mediation agreement. The Judge’s staff will send a copy of the order to each of the parties and the FCS.

If mediation does not result in an agreement, a custody or placement study may be conducted, and a fee will be charged. The Judge may appoint a guardian ad litem, an attorney who represents the best interests of your child or children. You will be required to pay for all or part of the guardian ad litem’s services, unless the Court decides that **both parties** are indigent. After the custody study is complete, the Judge will schedule a hearing on the motion and will notify all parties. At the hearing, the party who filed the motion to change custody or physical placement must present evidence to justify the change in custody or physical placement as requested in the motion.

In most cases, affidavits or written statements in support of your case from friends or family will not be admitted into evidence; you must bring your witnesses to the hearing to testify. Documents such as police reports, medical bills, or employment records may not be considered as evidence unless there is an exception to the evidence rules. You may want to consult with an attorney.